TABLE OF CONTENTS

	Page
Motion for Leave to File Brief, Amicus Curiae	1
Interest of Amicus Curiae	2
Brief Amicus Curiae	3
Statement of the Case	3
Questions Presented	4
Summary of Argument	5
Argument	9
1. The Brewing Industry Is, by Nature, Local in Its Scope	9
2. Competitive Problems of the Brewer	14
A. Distribution	14
B. Advertising	16
3. Ease of Entry Into the Brewing Industry	19
4. The Sales Gains of the Larger Brewers Have Been at the Expense of the Small Brewers	20
5. The Pabst Brewing Company Is a Dominant Competitor in the National Market	24
6. The Acquisition Has Particularly Affected the Status of the Competition in Wisconsin	26
A. The Intrastate Nature of the Brewers' Sales	27
B. The Significance of Draught Beer	30
7. The Merger Has Affected the Status of Competition in the State of Michigan	31
8. The Competitive Situation in Illinois	34
9. The Applicable Law of the Situation Would Prohibit This Merger	34
A. The Legislative History of the Clayton Act Clearly Envisions Prohibition of the Merger	35
B. Cases Decided Under Section 7 of the Clayton Act Show the Illegality of This Merger	37
Conclusion	42

Page

Exhibit 1: Brewer Members of the Brewers' Association of America 43

Exhibit 2: Sales of Leading Brewers—1962 46

Exhibit 3: Sales of Leading Brewers—1963 47

Exhibit 4: Sales of Leading Brewers—1964 48

Exhibit 5: Sales of Leading Brewers—1965 49

Exhibit 6: Sales of Individual Wisconsin Brewers—1962 50

Exhibit 7: Sales of Individual Wisconsin Brewers—1963 51

Exhibit 8: Sales of Individual Wisconsin Brewers—1964 52

Exhibit 9: Sales of Individual Wisconsin Brewers—1965 53

Exhibit 10: Sales of Beer in Michigan by All Firms Selling Over 5,000 Barrels in 1962 54

Exhibit 11: Sales of Beer in Michigan by All Firms Selling Over 5,000 Barrels in 1963 55

Exhibit 12: Sales of Beer in Michigan by All Firms Selling Over 5,000 Barrels in 1964 56

Exhibit 13: Sales of Beer in Michigan by All Firms Selling Over 5,000 Barrels in 1965 57

TABLE OF CASES AND AUTHORITIES CITED

CASES:

Brown Shoe Co., Inc. v. *United States*, 370 U.S. 294 (1962) 38, 41

Crown Zellerbach Corp. v. *Fed. Trade Comm.*, 296 F. 2d 800 (C.A. 9, 1961), *cert. den.* 370 U.S. 937 (1962) .. 40

United States v. *Pabst Brg. Co., et al.*, 233 F. Supp. 475 (1964) 37

United States v. *Philadelphia National Bank et al.*, 374 U.S. 321 (1963) 40, 41

RULES: Page

Federal Rules of Civil Procedure, Rule 41(b) 4

STATUTES:

Clayton Act, Section 7, 15 U.S.C. Sec. 18 .....3, 5, 35, 37, 38

Fed. Alcohol Admin. Act, 49 Stat. 977 (1935) 11

MISCELLANEOUS:

Senate Report No. 1775, 81st Cong., 2d Session 35, 36

House Report No. 1191, 81st Cong., 1st Session 35, 36

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 404

UNITED STATES, *Appellant,*

v.

PABST BREWING CO., ET AL., *Appellees.*

Appeal From the United States District Court for the Eastern District of Wisconsin

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MOTION FOR LEAVE TO FILE BRIEF, AMICUS CURIAE

Comes now the Brewers' Association of America, an Illinois non-profit corporation, by counsel, Thomas E. O'Neill, and moves the Court for leave to file a brief *amicus curiae* in these proceedings. Appellees Schenley Industries, Inc., The Val Corporation, and the Pabst Brewing Company, through counsel, have refused to consent to the filing of this brief. The United States has given such consent.

INTEREST OF AMICUS CURIAE

The Brewers' Association of America[1] is a national trade association of the brewing industry which numbers within its membership as of its last meeting, 89 of the individual brewing companies throughout the United States. The Brewers' Association of America represents the interest of the smaller brewers of the nation whose individual fates are at stake in the outcome of this case. The Board of Directors of the Association, by unanimous vote, has instructed counsel to file the attached *amicus* brief in these proceedings.

Perhaps most affected by this decision will be the operation of the brewers within the State of Wisconsin. There are presently 26 brewing companies in this State. Twenty of these breweries are members of the Brewers' Association of America. These twenty brewers in Wisconsin have been directly affected by the merger of Pabst and Blatz and have a vital stake in the outcome of this litigation; and the Brewers' Association of America submits that the interests of these brewers and other small brewers throughout the nation are not directly represented by the government.

WHEREFORE, the Brewers' Association of America respectfully moves the Court for leave to file a brief *amicus curiae*.

Respectfully submitted,

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Counsel for amicus curiae

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[1] A list of the member brewers as of October 1965 appears in the Appendix as Exhibit 1.

IN THE

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BRIEF AMICUS CURIAE

STATEMENT OF THE CASE

On July 30, 1958, the Pabst Brewing Company acquired the Blatz Brewing Company from Schenley Industries, Inc. On October 1, 1959, the United States filed a complaint in the United States District Court for the Eastern District of Wisconsin charging that this acquisition violated Section 7 of the Clayton Act, as amended, because its effect might be substantially to lessen competition or tend to create a monopoly in the production and sale of beer. The complaint

charged that such lessening of competition occurred in three basic markets: (1) the United States as a whole, (2) the State of Wisconsin, and (3) the three-state area of Wisconsin, Illinois, and Michigan.

After a lengthy pretrial discovery procedure, the trial began in the District Court before Judge Robert E. Tehan on January 27, 1964. The government elected to prove its case by the offering of Exhibits and portions of depositions. The government rested its case on January 28, 1964, after some 260 Exhibits had been placed in evidence. The defendants filed a Motion to Dismiss pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. Briefs were filed and a hearing was held on this motion on April 30, 1964. The Court granted the motion of the defendant for Dismissal pursuant to Rule 41(b) in an opinion dated September 22, 1964, and final judgment was entered on October 13, 1964.

On December 11, 1964, a Notice of Appeal to the Supreme Court of the United States was filed in the United States District Court for the Eastern District of Wisconsin.

On November 8, 1965, the Supreme Court considered the Jurisdictional Statement in this case and noted probable jurisdiction.

QUESTIONS PRESENTED

The basic question is whether the District Court erred in granting defendant's Motion under Rule 41(b) of the Federal Rules of Civil Procedure, on the ground that upon the facts and upon the law the plaintiff has shown no right to relief. This raises several

ancillary questions concerning the contested issues of this case which are:

(1) Are the States of Wisconsin, Illinois, and Michigan a "section of the country" within the meaning of Section 7 of the Clayton Act, as amended, regarding the sale of the product beer?

(2) Is the State of Wisconsin a "section of the country" within the meaning of Section 7 of the Clayton Act, as amended, regarding the sale of the product beer?

(3) Did the merger of Pabst and Blatz have the tendency and capacity "substantially to lessen competition or tend to create a monopoly" in the sale of the product beer, in the United States as a whole, in the three-state area and in the State of Wisconsin?

SUMMARY OF ARGUMENT

1. The Brewing Industry is, by Its Nature, Local in Its Scope

The history of the brewing industry in America is one founded on local competition. The small brewers of the nation have dwindled from 725 operating brewers after the repeal of Prohibition, until today there are less than 180 breweries left in business. Because brewing in the United States started as a local industry, in individual cities throughout the country, the competition in the brewing industry still remains local by nature. Although today the largest brewers of the nation are said to be national, their distribution and sales are geared to a local level.

2. Competitive Problems of the Small Brewer

The small brewer has problems of distribution because of his localized operation. The bulk of his sales are made close to the brewery. When the small brewer

operates outside the area near the brewery he is perhaps least effective. The larger brewers have procured the most efficient of the independent distributors, and in many instances, operate systems of distribution of their own.

In the field of advertising, the small brewer just doesn't have the money to compete with the larger brewers in the country.

3. Ease of Entry to the Brewing Business

One of the best indicators available to determine the difficulty of competition is the test of "ease of entry" into the industry. There is absolutely no possibility of a new firm entering the brewing industry. No new venture in the beer business has been successful in over 15 years.

4. The Sales Gains of the Larger Brewers Have Been at the Expense of the Smaller Brewers

The market shares of the larger brewers in the nation have continued to increase, and most particularly, the market share of Pabst, since the acquisition of Blatz, has continued to increase in great strides. All large brewers appear to be prospering while the *vast majority of small brewers seem to be in near failing condition with declining sales in each and every year.* In 1957, the top ten brewers of the country sold 45.06 per cent of the beer. This was the year before the merger of Pabst and Blatz. In 1965, the top ten companies sold 60.85 per cent of the beer in the nation. Regarding the sales of the top 25 brewers, these firms controlled 68.99 per cent of the market in 1957, and in 1965 controlled 87.90 per cent. Thus, today, the market share of all the small brewers in the nation is only 12.10 per cent of all the beer sold nationally.

5. The Pabst Brewing Company Is a Dominant Competitor in the National Market

The Pabst Brewing Company, since the merger, has advanced to third place in the national rankings, with a present total of about 8.2 per cent of all the beer sold nationally. The company has almost doubled its market share in the nation as a whole in the six years since the merger. In addition to sales gains, the company has continued to show increasing profits. Its 1965 sales income was up 39 per cent over 1961. Perhaps most important in the financial picture is the fact that the company can now boast of "cash and marketable securities" in the amount of $35.2 million. *This is enough to go out into the marketplace and purchase another big brewery.*

6. The Acquisition Has Particularly Affected the Status of Competition in Wisconsin

The Pabst Brewing Company had the 4th largest selling beer in Wisconsin before the merger. It purchased the brewer selling the most popular brand of beer in Wisconsin, Blatz. After the merger the combination sold twice as much beer as its nearest competitor, Hamm Brewing Company. By 1961, Pabst and Blatz had increased their shares of the market and enjoyed 27.41 per cent of the Wisconsin beer business. By 1965, the company had gained additional ground until it now controls 32.02 per cent of all the beer sold in Wisconsin. *During the time that the Pabst Company enjoyed such phenomenal success, the small brewers of Wisconsin suffered an average decline of nearly 23 per cent in the period from 1961 to 1965.* The sales of these same Wisconsin brewers are, in the main, limited to the State of Wisconsin, as 16 of the 28 brewers left in the state do the principal volume of their

business intrastate. Accordingly, the Wisconsin sales of Pabst and Blatz are most definitely the major factor in the diminishing share of the local brewers in the sale of beer in Wisconsin, since the Pabst-Blatz brands are the largest sellers, and the biggest competitors for the small brewers.

7. The Merger of Pabst and Blatz Has Affected the Status of Competition in Michigan

The Pabst-Blatz combination, in the years since the merger, has increased its percentage share of the market in Michigan. Before the merger, Blatz was the sixth largest selling beer in Michigan. After the merger, the Pabst-Blatz brands became the second largest sellers within the state, with 12.7 per cent of the market. They jumped into first place in 1963, and remain there today with 28.58 per cent of beer sales in Michigan being shared by Pabst and Blatz. From 1961 to 1965, the percentage share of the Michigan market of the Pabst and Blatz brands jumped from 15.96 per cent to 28.58 per cent. Meanwhile, the sales of the local brewers within the state continued to decline. Likewise, the number of small firms doing business in Michigan has declined by 37 per cent in the short period from 1961 to 1965.

8. The Competitive Situation in Illinois

Even though statistics are unavailable for Illinois beer sales, it appears that half of the brewers in that state have gone out of business since 1957. Accordingly, there is no hope of saving the small brewers of Illinois. They are already gone, but meantime the sales of Pabst and Blatz continue to increase.

9. The Applicable Law of the Situation Would Prohibit This Merger

Section 7 of the Clayton Act forbids a merger in any "section of the country," where the effect may be substantially to lessen competition or tend to create a monopoly. The cases and the legislative history of this Act clearly show that the merger of Pabst and Blatz was in violation of this law.

ARGUMENT

1. THE BREWING INDUSTRY IS, BY NATURE, LOCAL IN ITS SCOPE

Before considering the questions raised by this appeal it is necessary to briefly consider the past and present history and status of beer competition within the United States. It will be among the smaller brewers where the decision of this Court will have its greatest impact.

The small brewers of the nation compete locally, and essentially intrastate. Historically, the establishment of small breweries throughout the country was like the founding of a bakery, to bake bread for a town, or like the location of a dairy, to supply milk for the locality. Like bread and milk, beer is a perishable commodity. When unpasteurized, it quite resembles milk as it is subject to spoilage, and must be kept under refrigeration.

At the turn of the century every town had its local brewery which sold beer to the taverns, restaurants, and homes within the town. Beer was delivered much like bread and milk. A few of the brewers, even as early as 1900, had turned to distribution outside of the town in which the brewery was located, but there were no national breweries, as we know the term today, for pasteurization was not totally effective, and the

modern bottle cap had not even been invented. Thus, the bulk of any brewers' beer which went to another town went by ice-laden railroad car. However, the real growth of the national brewers did not start until after the "noble experiment" failed.

In 1934, after the repeal of the 18th Amendment, there were 725 breweries operating within the United States. By 1940, this number had stabilized somewhat and there were then 580 in business. In 1945, 461 brewers were operating, and in 1950, 392 were licensed to operate. In 1955, 285 breweries were licensed to operate, and in 1958, the year of the merger, 243 were operating within the country. In the eight years since the merger of these two companies there has been a dramatic decrease until now, fewer than 180 brewing companies are operating within the United States.

Back in 1934, only 25 per cent of the beer sold was in bottles, the rest was draught beer, which was distributed locally and the bulk of it by small brewers.

With the development of packaging techniques, beer became available away from the place where it was brewed, and the concept of the national shipping brewer was born. Certain brewers with foresight and resources began expanding their markets outside their customary geographical area by shipping keg beer, or packaged beer, to distant markets.

However, the vast majority of brewers in the post-prohibition era continued in the methods of their founders, to service the towns and localities which were close to the location of their plants.

Many smaller brewers found that they were "in the way" as larger "shipping brewers" expanded their

markets. These larger brewers came into smaller brewers' markets and took over a share of the local market. Hundreds of local breweries, as a result, were forced out of business. Others soon found that they had to find some additional market for their beer or face the alternative of closing the brewery.

They reached out, in a small way, for markets at some distance from the plant where they could sell a portion of their beer. Thus the "local shipping brewer" was born. This situation created what might be called the technique of defensive shipping. That is to say, not shipping into another area because a brewer wanted increased market coverage, but shipping in because he wished to utilize idle productive and labor capacity. With some seven hundred brewers in business at one time the necessity of limited shipments to various areas by all brewers, out of their customary trading areas, precipitated eventually a multiplicity of brands in many markets. *Yet, the average brewer had entered interstate commerce on but a token scale.* The bulk of his business, as well as the bulk of the larger brewers' business during the thirties, was in the geographical area where the Brewery was located.[2]

Today, in 1966 this historical development of competition in the brewing industry, at the local level,

[2] The fact that the average brewer was essentially localized was recognized at the time of "repeal" when the Federal Alcohol Administration Act was enacted. Due to the fact that beer business at that time was essentially an intrastate operation, the Federal Alcohol Administration Act of 1935, 49 Stat. 977, provided that brewers, unlike distillers, could operate without Federal basic permits, and that their labeling and advertising practices were outside of Federal jurisdiction, except to the extent that the laws of the various states imposed labeling and advertising restriction similar to those prescribed by Federal regulation.

remains an important consideration. Although the larger brewers are irretrievably in the stream of interstate commerce, *the local brewers, with whom the national brewers are competing, are not in interstate commerce as regards the major proportion of their business.* Small brewers, in the main, have remained local operators, serving the geographical area closest to their individual plants.

Since the majority of brewers are small brewers, the competition in the brewing industry is geared to local levels. As one moves from state to state, or even from city to city, the brands in the marketplace are different. The brewers themselves are different. The distributors are different. The laws of the states are different regarding the conditions and methods of sale, and the outlets where beer is available for sale, in many instances, are likewise different.

Competition in the beer business is vastly dissimilar from the national competition which exists in industries such as steel, aluminum, automobiles, electrical appliances, television, et cetera.

Go to any city in any state and you will find the same national names in these categories represented in the marketplace. Perhaps the leaders in one area will not be the leaders in another, but at least they will all be represented.

In the beer industry, even certain national leaders in the sale of beer are often merely local operators on a large scale. For instance, sales of Rheingold beer in 1965 amounted to over 4 million barrels, yet the operations of the Company were largely restricted to an area surrounding New York City. Similarly, the sales of Schaefer beer, the sixth largest selling brand in the

nation, were restricted to the New York area. Likewise, Lone Star and Pearl beers are sold only in Texas and the surrounding states, and Olympia beer is sold only in the northwest. These beer brands are mentioned because they are so-called national leaders.

Yet all brewers, whether they be national, regional, or local, compete, in the final analysis, at the local level.

Defendants below have argued that the only area of significant competition within the brewing industry is the nation as a whole. Considering the history of the brewing industry, the areas of competition, and the number of competitors, this is patently false. Competition in the brewing industry is essentially localized. The smaller brewers, it is true, have been eliminated from certain areas of local "effective competition" by the merger activities of larger brewers, by their pricing practices, or by market pressures. As a result, the areas of "effective competition" with the brewing industry have been widening. However, *such areas have not widened to the point of considering the nation as a whole as the lowest common denominator of significant competition* within the industry.

Generally speaking, the smaller the brewer's production, the smaller his area of competition will be. The protection of local competition remains of extreme economic significance to small brewers where the business of such small brewers is conducted in one city, in a group of counties, or, as the case may be, in one state or in two or three states. For the brewer and those who join him in competition in such a restricted area, it becomes, most certainly, not only an area of *effective competition,* but the *sole* area of competition.

Small brewers who deal in limited segments of the marketplace are completely unconcerned about competitive conditions on the national level, of industry shares on the national level, or with competition in other states where they do not do business. Such brewers are interested only in the competitive conditions where they sell their beer.

2. COMPETITIVE PROBLEMS OF THE BREWER

A. Distribution

There is a basic difference between the distribution of Pabst, Blatz, and the other widely distributed beers, and the distribution of local, small brewers' beers. In most instances, about 80 per cent of a local brewer's sales are made in an area about one hundred miles from the brewery. Within this area the small brewer almost always handles his own distribution. Beyond the area serviced by the brewer's own personnel, he is forced to distribute his beer through independent wholesalers, or else sell direct to retailers. Usually his distribution outside the principal trading area is ineffective, and prone to attack by his competitors.

The national brewers utilize independent wholesalers, but they also have distributorships which are owned by the brewing company. The record at page 242 regarding answers to government interrogatories shows that five wholesale corporations were owned by Pabst.

At page 130 of the record, portions of the deposition of Mr. Harris Perlstein are of interest:

> Q. "What percentage of the sales of Pabst Blue Ribbon beer was made before the acquisition of Blatz through distributors?"
>
> A. "Oh, probably, and this is approximate, eighty per cent."

and further,

> Q. "What percentage of the distribution of Blatz beer since the acquisition has been through wholesalers and distributors?"
>
> A. "If you will keep in mind that these are approximations on my part I would say 75 to 80 percent."

The testimony of Mr. Perlstein on this point of distribution is indicative of the amount of most larger brewers' beer which is sold through distributors or wholesalers, rather than directly.

However, for the average small brewer, the proportions are perhaps reversed. In most instances, the average small brewer distributes about 80 per cent of the beer from his plant through his own sales force. The other 20 per cent or less is sold through wholesalers or distributors. Where the small brewer may have gained a valuable wholesaler for his beer, he often lives in fear lest one of the large brewers might pirate this distributor from him.

There is constant coercion on the part of the larger brewers, operating outside the geographical area of their plant, to secure efficient distributors. On this point the testimony of Mr. Le Roy Payne of the now defunct E&B Brewing Co. of Detroit, Michigan, is most interesting:[3]

> "Here are the most important reasons for our sales decline: One, loss of distributors and a gradual constriction of the sales area where the product is sold. During the past three years the number of distributors handling the products of this com-

[3] Hearings before Subcommittee on Ways and Means, 84th Congress, Second Session, page 813.

pany have been reduced approximately 40 percent. Representatives of the larger companies consistently approach our distributors . . . After a number of visits by the salesman, the distributor usually puts in the brand of the larger company. Practically every time the larger company increases its budget for a short time, puts in a large selling organization, and then suggests to the distributor to *discontinue a competitive price brand; namely, our brand.* Thus the smaller brewery loses distribution and sale of its products in an area where it has spent considerable money to secure and to service." [Italics supplied.]

B. Advertising

Because the ultimate purchaser of beer is a local individual and because the smaller brewers have operated, and still continue to operate locally, the advertising of all brewers, whether national, regional, or local, must be geared to the local level. Even though larger brewers use what may be termed national advertising, the same is geared to local markets, whether it be by television, newspaper, radio, or point of purchase.

Since the merger of Pabst and Blatz, the company has grown currently to be the nation's third largest brewer. The combination has the power to put any one of the smaller brewers out of business within a matter of months, should the Pabst Company embark on a concerted marketing and advertising effort within a small brewer's local area.

The advertising budget of the Pabst Brewing Company for 1964 was approximately 15.9 million dollars, according to *Advertising Age*. This figure is $1,700,000 above the estimated $14.2 million spent for advertising of the Pabst and Blatz brands in 1963. In 1964 this

amount was exceeded only by the expenditures of the two largest brewers, Anheuser-Busch and Schlitz.

Each year the weekly magazine, *Advertising Age* publishes the advertising expenditures for leading brands of beer and ale. Last year these *Advertising Age* figures for 1964 showed that Pabst spent $1.29 per barrel for advertising in newspapers, magazines, and television. *This does not include any expenditure for point of sale, radio, or outdoor advertising.*

The Pabst advertising expenditures were somewhat less than the $1.59 per barrel, which Anheuser-Busch spent in these media during 1964, and the $2.22 per barrel spent by Schlitz. Most of the larger brewers spent over one dollar per barrel in these measured media; but this is only a portion of the story. At least *double this amount is spent by all the major brewers in so-called unmeasured media,* particularly in point of purchase.

Before the merger of Pabst and Blatz the amount spent for advertising was less for both individual companies and as a total. But before the merger, the dollars spent in the advertising of Pabst and Blatz brands was not spent in concert, as is the situation at the present time. Previous to the merger, the Pabst brand and the Blatz brand were actively competing for the public dollar.

As an example of this, before the merger of these two brewers, the Blatz brand had traditionally been Milwaukee's most popular brand of beer. Now, according to *Advertising Age,* Pabst in 1965 topped Blatz as Milwaukee's number one beer after 15 consecutive years when Blatz held this position. According to the *Milwaukee Journal's* 43rd Annual Consumer Survey,

21 per cent of the Milwaukee bottled beer buyers now favor Pabst, with 18 per cent purchasing Blatz over the other brands in that market. This is a reversal of the 1964 figure when 18 per cent of the purchasers favored Blatz and 16 per cent purchased Pabst beer. It is submitted that this did not take place by accident, but rather by design. The merged corporations can now juggle the market emphasis to favor the greater designs of the parent company.

The small brewer, as a local operator, cannot afford to compete with the all-out efforts of the larger brewer. Take, for instance, the efforts of Pabst in developing a market, where previously the company did not have significant market penetration.

Page 305 of the record indicates the effort which Pabst made back in 1957 toward developing the Washington, D. C. market. On the following pages it is noted that in Washington, D. C. alone, 300 Pabst clocks were to be placed at a cost of $60.00 each, six female models were to be furnished, and 300 barbecue sets were to be supplied at a cost of $60 each. In addition, $15,000 worth of radio spot advertising was to be contracted for, and $10,000 worth of newspaper advertising.

This is a typical market effort for many brewers engaged in national sales, when entering a local market.

What of the efforts of a smaller brewer in a market like Washington, D. C.? The smaller brewer generally transports a large truck filled with bottled or canned beer to town and deals with the distributor, or the individual liquor store on a personal basis, usually stressing only the price advantages of his product. No radio spots are furnished. No newspaper advertising is in-

serted. No models are hired. No barbecue sets, and no clocks are supplied. The small brewer just doesn't have the money to spend in his own local market, let alone distant markets.

Before concluding the subject of advertising and promotion activities, a glimpse into the advertising activities of the small brewer within his local market would be pertinent.

In 1964 a questionnaire was mailed to members of the Brewers' Association of America. Typical of the response was that from the fifteen small brewers in Wisconsin who reported concerning their individual advertising expenditures. The average of these fifteen brewers was $1.03 per barrel, with a high of $2.34 and a low of 26¢ per barrel. However, *the total amount spent on advertising by all these fifteen small Wisconsin brewers only amounted to $430,634 for an average advertising expenditure of $28,700 per brewer. The record at page 273 shows that the Pabst Brewing Company alone in 1960 spent $779,472 in advertising in Wisconsin.*

As far as profit and loss are concerned, five of these fifteen Wisconsin brewers showed a net loss on their operations, ranging from a high $18,850 to a low of $5,006. Profits among the remaining ten brewers were meagre, from a high of $87,944 down to only $5,000.

3. EASE OF ENTRY INTO THE BREWING INDUSTRY

One of the tests which may be applied to determine the status of competition is the so-called ease-of-entry test for new ventures into an industry.

Ease of entry into the brewing industry is non-existent. Within the past two years only two breweries

started into operation. The Valley Brewing Company at Mercedes, Texas lasted a matter of months. The other, the Dakota Malting and Brewing Company of Bismark, North Dakota, was incorporated by North Dakota businessmen who thought it would be well to have a brewery in that state, as there was none. It was a small plant of a capacity of 75,000 barrels annually. It was constructed at a cost of $400,000. In 1965 it was sold at a sheriff's sale for $284,000.

There have been a few periodic and pathetic efforts, similar to the foregoing, made to enter the brewing industry in recent years, but statistics disclose that *except in the case of an established brewing company building a branch plant, no new brewer has successfully entered the brewing industry in over fifteen years.*

4. THE SALES GAINS OF THE LARGER BREWERS HAVE BEEN AT THE EXPENSE OF THE SMALL BREWERS

The record discloses at pp. 344 through 347 that the top ten brewing companies had increased their share of the market from 32.68 per cent of total sales in 1948 to 45.06 per cent in 1957, and to 52.60 per cent in 1961.

Likewise, the market share of the top twenty-five Brewers increased from 49. 2 per cent in 1948 to 68.99 per cent in 1957, and to 76.96 per cent in 1961.

From the accompanying chart it will be seen that the market concentration of the larger brewers of the nation has continued to increase.

COMPARISON OF TOP BREWERS

	1962	1963	1964	1965
l Beer Sales	91,197,192	93,974,003	98,643,644	100,411,085
s of Top 10 Brewers	50,265,168	53,437,758	57,090,648	61,110,000
Cent of Total Beer Sales, Top 10	55.11%	56.86%	57.87%	60.85%
s of Top 25 Brewers	72,854,354	77,348,453	83,150,534	88,269,000
Cent of Total Beer Sales, Top 25	79.88%	82.30%	84.29%	87.90%
s of All Other Brewers	18,342,838	16,625,550	15,493,110	12,153,058
Cent of Total	20.11%	17.70%	15.71%	12.10%
ber of Brewing Plants	214	198	190	182
ber of Brewing Companies	170	152	144	137

The foregoing chart shows that the larger brewers of the nation have further increased their shares of total beer sales to a point where today the position of the smaller brewers of the nation is most precarious.

The individual sales of each of the top ten brewers and of the top 25 brewers for the years 1962, 1963, 1964, and 1965 appear in the Appendix hereto as Exhibits 2, 3, 4, and 5.

From 1962 to 1965, the top ten brewers of the nation have bettered their aggregate percentage of the market from 55.11 per cent of total sales to 60.85 per cent.

To the same extent the top 25 brewers of the nation have increased their aggregate share from 79.88 per cent in 1962 to 87.90 per cent in 1965.

The effect of this market concentration on the small brewers of the nation is apparent. *Back when this*

merger took place, in 1958, the small brewers of the nation enjoyed 29.29 per cent of the national business in the sale of beer. From 1958 to 1961, this share of the market shrank to 20.11 per cent, and from 1962 to 1965 it further was reduced until *the latest figures show that all the small brewers of the nation only have 12.10 per cent of the beer business.*

The competition which is endangered here in the merger of Pabst and Blatz is not and was not the competition at the most vigorous upper levels of National competition, but the competition at the lower levels of local competition.

The larger brewers in the industry, as can be seen from the foregoing statistics, do not appear to have suffered from the competition among them. Nearly all of the top twenty five brewers continue to show sales gains, year after year. This raises the question concerning where these sales gains are being made.

The size of the market for beer is not really being enlarged, as the per capita consumption, although edging upward, is not making significant gains. Thus, additional users of beer are not being recruited on a large scale. The increased sales of the larger brewers are accounted for only by the constantly diminishing share of the beer market enjoyed by local brewers.

One reason for this is that the smaller brewers of the nation are, of their very nature, unable to operate as efficiently as the larger brewers.

The dominant brewers in the nation have new canning and bottling lines which operate well over twice as fast as the older bottling equipment of the smaller brewers. The smaller brewers cannot afford to replace this old equipment, as the limited sales of most small

brewers cannot utilize the bottling and canning equipment which they presently have for more than one shift a day, and sometimes not even at that rate. This fact makes it obviously difficult for the small brewer to compete on a cost basis with the most efficient operators.

We would not seek to penalize efficiency, but certainly *the efficient Brewer who has been able to extend his operations throughout a wide geographical area of competition should not be allowed to minimize the extent of his injury to competition through his efficient operations by imposing his own standard of size and market area as the norm by which all competition must be judged.*

The national picture does not present an accurate portrait of the status of competition. In actuality, the national statistics are compiled by accumulating the results of the competition in many local markets.

Where the competitors in all areas of the nation are very nearly the same, then national statistics give a true picture of the national market. In the beer industry the actual competitors vary from city to city.

The Pabst Brewing Company has achieved a very respectable 8.2 per cent of national sales. However, this is the result of widely varying market penetration and competition with virtually all the brewers in the nation; *not in the nation as a whole, but in restricted, segmented areas of competition.*

In these segmented areas the Pabst Brewing Company may have a very large share of the market, as is the case in Wisconsin, Illinois and Michigan, or the company may have a very small share of the business, as is the case in many other areas.

Still, the merger of Pabst and Blatz has the capacity and tendency to lessen competition in all areas of the country since the combine is free to draw on its resources so as to concentrate on any specific local area which the company may choose, and through advertising and marketing pressures, cause a threat to local small brewers in any section of the country, regardless of the present or past national market share of the Pabst-Blatz brands.

5. THE PABST BREWING COMPANY IS A DOMINANT COMPETITOR IN THE NATIONAL MARKET

The Pabst Brewing Company has emerged from the acquisition of Blatz to be a dominant force in the marketplace. The following chart shows the rank of Pabst on a national scale since 1961.

THE PABST BREWING COMPANY

	1962	1963	1964	1965
Sales	5,842,707	6,672,000	7,444,000	8,234,000
Rank	3	3	3	3
% Of Total Sales	6.40	7.09	7.54	8.2

This data is drawn from Exhibits 2, 3, 4, and 5, which show the sales of the twenty-five largest brewers in the nation for the years 1962 through 1965.

These Exhibits demonstrate the trend toward concentration in the brewing industry, and the dominant position of the Pabst Brewing Company within this trend.

Whereas the record of the case shows that immediately after the Pabst-Blatz merger, Pabst in 1959 became the sixth largest brewer in the nation, with 4.79 per cent of all beer sold nationally, the company has *almost doubled* its market share in the 6 years since that time.

The financial fortunes of the company, although never dull, glisten with greater luster as each year passes. The following extracts from the Pabst Brewing Company's financial reports will illustrate this.

PABST FINANCIAL DATA
(thousands)

	1962	1963	1964	1965
Sales in Barrels	5,844	6,672	7,444	8,234
Net Sales	$181,379	$202,860	$227,610	$253,500
Net Income	$6,436	$8,027	$10,021	$12,400
Net Income Per Share	$1.38	$1.71	$2.11	$2.62
Capital Expenditures	$7,098	$11,389	$19,110	$13,500

Although the foregoing is certainly self-explanatory in showing the tremendous growth not only in barrels but also in sales and income of the Pabst Brewing Company, it would be well to point up briefly the fact that net income has nearly doubled from 1962 to 1965 and that income per share has likewise nearly doubled while the net sales of the company, in rising from $181 million in 1962 to $253 million in 1965, have risen by 39 per cent.

Additionally, the annual report for the calendar year 1965 lists, as a part of the balance sheet, cash and marketable securities of the value of $35.2 million. In a business such as the brewing industry, this is an unusually high cash reserve which places the company in a most favorable position for further acquisitions in the market. Should this Court decide that the merger between Pabst and Blatz was not illegal under Section 7, the corporation could very easily acquire one or more

additional breweries which would further enhance the competitive position of the company, to the detriment of the small brewers of the country.

6. THE ACQUISITION HAS PARTICULARLY AFFECTED THE STATUS OF THE COMPETITION IN WISCONSIN

The record of the case at page 321 et seq. shows that in 1957, the year immediately prior to the merger of Pabst and Blatz, Blatz was the *leading* brand sold in Wisconsin with 12. 81 per cent of the Wisconsin market. Pabst, in that year was the 4th largest selling beer with 11.14 per cent of the Wisconsin market. The record, through page 325, traces the continued rise of both the Pabst and Blatz brands until in 1961, Pabst and Blatz combined enjoyed 27.41 per cent of the Wisconsin business.

This trend has continued in Wisconsin as the following tabulation will demonstrate.

GROWTH OF PABST BREWERY COMPANY IN WISCONSIN[4]

Year	Barrel Sales of Pabst Brewing Co. in Wisconsin	Pabst Co. % of Wisconsin Sales	Pabst's Rank
1961	905,262	27.41	1
1962	904,879	27.56	1
1963	968,226	28.72	1
1964	1,063,203	30.26	1
1965	1,123,768	32.02	1

[4] Wisconsin Department of Taxation, Division of Beverage & Cigarette Taxes.

While the sales of the Pabst and Blatz brands continue to capture a larger and larger percentage of the market the sales of the other Wisconsin brewers consistently decline. The terrific sales losses which have been felt by these brewers, just between the years 1962

and 1965, are set out in the following tabulation, which is compiled from Exhibits 6 and 9 in the Appendix.

DECLINE IN SALES OF LOCAL WISCONSIN BREWERS

Brewer	1962 Sales, bbls	1965 Sales, bbls	% Intrastate business	Decline from 1962
Berlin Brew Co.	9,174	Out of Business		
Effinger Brg. Co.	9,355	7,903	100	15.1%
Fauerbach Brg. Co.	29,976	23,314	100	22.1%
Fountain Brg. Co.	9,238	1,536	51.37	83.7%
Gettelman Brg. Co.	157,082	66,789	77.28	57.6%
Fox Head Brg. Co.	32,467	Out of Business		
Leinenkugel Brg. Co.	73,040	75,999	95.55	3.4% Gain
Marathon Brg. Co.	8,119	4,229	100	48.2%
Marshfield Brg. Co.	8,248	7,818	100	4.9%
Northern Brg. Co.	18,517	14,163	47.42	23.8%
Oconto Brg. Co.	36,610	33,286	86.67	9.3%
Oshkosh Brg. Co.	53,907	46,754	97.22	13.4%
Peoples Brg. Co.	29,351	28,152	99.15	4.1%
Potosi Brewing Co.	45,516	41,214	43.52	9.5%
Rahr Green Bay Brg. Co.	33,097	25,890	86.92	21.9%
Rhinelander Brg. Co.	17,802	12,131	85.85	32.1%
Rice Lake Brg. Co.	16,260	13,485	80.78	17.3%
Stevens Pt. Brg. Co.	33,963	31,372	100	7.7%
Two Rivers Bev. Co.	8,268	5,547	100	33.0%
G. Walter Brg. Co.	35,748	30,625	100	14.3%
Walter Brg. Co.	30,647	28,273	96.89	7.9%
West Bend Lithia Co.	28,763	26,437	80.46	8.1%

The foregoing tabulation hardly needs further explanation. One brewer's sales declined over 83 per cent. The average decline of all 19 brewers listed was 23.36 per cent. It is obvious that the recent sales successes within the state of Wisconsin, made by Pabst have been at the expense of the smaller brewers operating within that state.

A. The Intrastate Nature of Wisconsin Brewers' Sales

Appellees have attempted to minimize the effect of the intrastate sales in Wisconsin by the Pabst Brewing Company by shifting emphasis to two other factors: (1) the bulk of the beer produced in Wiscon-

sin is sold outside of Wisconsin, and (2) a large volume of beer is imported into Wisconsin.

It is submitted that when the proper perspective is placed upon Wisconsin brewers and upon Wisconsin beer sales within the state, the foregoing factors are irrelevant. Exhibits 6, 7, 8, and 9, which appear in the Appendix show the sale of individual Wisconsin brewers for the years 1962 through 1965.

These statistics show the competitive situation among the Wisconsin brewers themselves, and on their face, show that Wisconsin is an area of significant competition, and should adequately demonstrate that Wisconsin is a "section of the country" within the meaning of Section 7 of the Clayton Act.

Taking these Exhibits year by year, in 1962, there were 29 brewing companies operating within the State of Wisconsin. Eight of these brewers sold their entire volume of beer in Wisconsin. Eight more sold in excess of 80 per cent of their beer within the State of Wisconsin. Thus, over half of the brewers in Wisconsin operate almost entirely within that state.

These statistics, which indicate that a great volume of Wisconsin-brewed beer is sold outside the State of Wisconsin, must also be further analyzed. Actually, the largest sellers of beer within Wisconsin for 1962 were the Pabst Brewing Company, the Schlitz Brewing Company, and the Miller Brewing Company. These same three brewers during 1962 also shipped more beer outside the State of Wisconsin than any other brewers.

Insofar as the other 16 brewers who do an intrastate business within Wisconsin are concerned, *it makes no*

difference that these three brewers, out of the total of 28, do any business outside the state, as they are also the leaders as far as intrastate sales are concerned.

It is accordingly reasonable to disregard the out-of-state sales of the Pabst Brewing Company, the Schlitz Brewing Company, and the Miller Brewing Company, as these out-of-state sales have no bearing, in any event, upon the intrastate sales of beer by these companies.

By subtracting the out-of-state sales of these three companies from the compilation of out-of-state sales it becomes apparent that 79.34 per cent of all sales, both in and out of the State of Wisconsin by the remaining brewers—other than Pabst, Schlitz, and Miller—were made within the state.

To the same extent in 1963 there were 28 brewing companies operating within the State of Wisconsin whose total Wisconsin sales amounted to 2,588,714 barrels. Concerning the character and marketing area of these brewers' operations, it is apparent that 8 of these brewers made all of their sales within the State of Wisconsin. In addition, nine brewers sold over 80 per cent of their beer within the State of Wisconsin. By removing the out-of-state sales of Pabst, Miller, and Schlitz from the 1963 compilation, this leaves 3,247,947 barrels sold by all the other Wisconsin brewers both in and out of the state, and this amounts to 79.70 per cent of sales.

Going over to 1964 statistics, the same picture is presented. In 1964 there were 27 brewers operating within the State of Wisconsin. Again, 8 of these brewers sold all of their beer within the state. In addition to these, 9 brewers in 1964 sold in excess of 80 per cent

of their beer within the State of Wisconsin. In order to view the true measure of intrastate operations in Wisconsin it is necessary again to extract the out-of-state sales by Pabst, Schlitz, and Miller. This would leave 3,432,491 barrels of beer sold both in and out of Wisconsin by all the remaining Wisconsin brewers. This means that 78.88 per cent of all the remaining sales both in and out of Wisconsin were intrastate.

Finally, to consider 1965 statistics, in that year, there were 26 brewing companies operating within the State of Wisconsin. Seven of these brewers made their entire sales within the state. Additionally, 9 brewers sold over 80 per cent of their beer within the state. Taking the out-of-state sales by Pabst, Schlitz, and Miller out of the statistical compilation, this leaves 3,437,050 barrels sold by all the remaining Wisconsin brewers both in and out of the state. This means that 78.90 per cent of all the remaining beer sold by the brewers of Wisconsin, in any area, were totally intrastate.

B. The Significance of Draught Beer

The record at page 327 shows that Wisconsin is first in the consumption of draught beer. In 1961, 39 per cent of the beer sold in Wisconsin was draught beer. This was considerably above the national average for all of the states, which was 19 per cent draught and the remainder in bottles and cans.

The significance of this is that generally draught beer is an index of small brewers' activity.

As we have seen, the small brewers, and all brewers, originally sold their beer in the localities close to the plant. This was traditionally draught. It is signifi-

cant that in 1961 the draught beer sales were highest in the state with also the largest number of brewers.

It is likewise significant that this same state of Wisconsin led all others in a per capita consumption of 25.5 gallons per person in 1961. It will be noted that the state with the second largest number of breweries, and also the second highest percentage of draught beer, was Pennsylvania, which in 1961 had 35.5 per cent of its total sales in draught beer.

At the other end of the spectrum, the states with the lowest per capita consumption are Alabama and Mississippi, with a per capita consumption of less than six gallons per person. These same states had draught beer sales in 1961 of 2.65 per cent for Mississippi and .71 per cent for Alabama. It is significant that neither of these states has a brewery within its borders.

7. THE MERGER HAS AFFECTED THE STATUS OF COMPETITION IN THE STATE OF MICHIGAN

The record at pages 329 through 333 graphically depicts the growth of the Blatz sales in Michigan following the Pabst-Blatz merger.

Pabst beer was hardly a factor in the market in 1957, and Blatz was then the sixth largest selling brand with 5.72 per cent of Michigan sales. By 1959 Blatz was *second* and Pabst was selling 1.24 per cent in the Michigan market. The Blatz brand gradually increased its percentage share of the market, but in 1961 it still stood in 2nd place behind the leader, Stroh.

In the years since 1961, the Pabst-Blatz combination has taken over 1st place in the Michigan market as is exemplified in the following table:

GROWTH OF PABST SALES IN MICHIGAN[5]

(In Barrels of 31 gallons)

Year	Sales of Pabst Brewing Co.	Pabst Co. % of Sales	Pabst's Rank
1961	836,542	15.96	2
1962	969,386	18.58	2
1963	1,257,720	24.25	1
1964	1,429,387	26.12	1
1965	1,578,073	28.58	1

[5] Source: Michigan Liquor Control Commission, Mfgrs. & Wholesalers Dept.

The amazing story, however, is not the rise of Blatz in the marketplace, but rather the *rise of Pabst.* As can be seen in the following table, the Pabst brand in Michigan rose from less than 1 per cent in 1961 to over 14 per cent in 1965 to move ahead of the Blatz brand by one percentage point.

BREAKDOWN AS BETWEEN MICHIGAN SALES OF PABST AND BLATZ[6]

Year	Pabst Brand Sales as a Percentage of Total Sales	Blatz Brand Sales as a Percentage of Total Sales
1961	.85[7]	15.12[7]
1962	2.87	15.71
1963	9.15	15.10
1964	11.58	14.54
1965	14.85	13.73

[6] Source: Michigan Liquor Control Commission, Mfgrs. & Wholesalers Dept.

[7] Computed from Joint Exhibit 85.

The same situation as occurred in Wisconsin also seems to have repeated itself in Michigan between the years 1962 and 1965. There appear in the Appendix hereto as Exhibits 10, 11, 12 and 13, the statistics for sales of beer in Michigan by all firms selling over 5,000 barrels in 1962, 1963, 1964 and 1965. From these Exhibits the following tabulation has been prepared showing the sales of some of the smaller brewers selling in Michigan:

Brewer	1962 Sales, bbls.	1965 Sales, bbls.	Decline from 1962
Gobel Brg. Co.	195,676	Out of business	—
Bosch Brewing Co.	88,084	49,865	43.5%
Atlantic Brg. Co.	68,796	16,402	76.2%
Sebewaing Brg. Co.	27,827	Not available	—
Buckeye Brg. Co.	26,735	16,346	39.0%
Canadian Ace Brg. Co.	13,808	10,334	25.4%
Geyer Brg. Co.	10,887	15,102	39% gain
Peter Hand Brg. Co.	10,643	19,827	86% gain
Indep. Milw. Brg. Co.	10,242	Out of business	—
Hornell Brg. Co.	5,983	Out of business	—
ALL OTHER BREWERS	(44) 52,898	(32) 20,405	61.3%

The foregoing speaks for itself. Two brewers had substantial gains, and four brewers had substantial declines in the volume of Michigan sales. Three other brewers in the listing went out of business during the period. *Most important, however, is the fact that there was a 61 per cent decline in the barrelage of the very smallest brewers selling within the State of Michigan between 1962 and 1965. Likewise, the number of small firms doing business in Michigan declined by 37 per cent.*

8. THE COMPETITIVE SITUATION IN ILLINOIS

Statistics showing Illinois beer sales from 1961 to date have been kept confidential by the Illinois Liquor Control Commission. Yet, the merger of Pabst and Blatz has been a most serious factor in the declining numbers and sales of small brewers located in Illinois, and the number of small brewers elsewhere who sell beer within the state.

On July 1, 1957 there were 18 breweries operating within Illinois. There are exactly half that many today. By deduction it might be asserted that the situation which has been shown to prevail regarding the small brewers in Wisconsin and in Michigan has also occurred in Illinois. Even though records are not available for recent Illinois sales, it must be assumed that the failure of nine small brewers within the state between 1957 and 1966 was due, in some measure, to the activities of the Pabst-Blatz Company. Unfortunately, to what degree this competition has suffered cannot be definitely shown.

9. THE APPLICABLE LAW OF THE SITUATION WOULD PROHIBIT THIS MERGER

The function of this brief is not to argue the law of the case but to present the factual situation as it affects the small brewers. Still, it is necessary to point out that the foregoing competitive injury to the small brewer, within certain areas of the country as a whole, within the State of Wisconsin, and within the State of Michigan, is just what the Statute was designed to prohibit.

A. The Legislative History of the Clayton Act Clearly Envisions Prohibition of the Merger

Section 7 of the Clayton Act, as amended, states in part, "no corporation engaged in commerce shall acquire, directly or indirectly, . . . the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce *in any section of the country,* the effect of such acquisition may be *substantially to lessen competition* or *tend to create a monopoly.* (Italics supplied)

The Intent of the Statute

Congress did not intend, as counsel for defendants below would urge, that a monopoly must be established by the merger of the two corporations, before such merger would fall within the prohibitions of the Clayton Act. Congress has attempted to set up a road block against mergers tending to create a monopoly, and has thus legislated not only against those having a nationwide competitive effect, but also against those of a more localized nature, which may substantially lessen competition or tend to create a monopoly *in any section of the country.*

The intent of Congress in this regard is made clear in Senate Report 1775 of June 2, 1950 and House Report 1191 of August 4, 1949, wherein it is stated:

> The intent here, as in other parts of the Clayton Act, is to cope with monopolistic tendencies in their incipiency and well before they have attained such effect as would justify a Sherman Act proceeding.

Commenting further on this objective, the Congress stated in its House and Senate Reports:

> Thus the phrase, "in any section of the country" was made applicable to both the lessening of competition and the tendency to create a monopoly . . . Hence, an acquisition is not to be interpreted merely in terms of either its effect on competition or its tendency to create a monopoly "in the nation as a whole." The Act is to be violated if, as a result of an acquisition, there would be a substantial lessening of competition or a tendency to create a monopoly in any section of the country.

The House and Senate Reports discuss in detail the meaning of the phrase, "section of the country." The following further excerpt is most pertinent to the facts of the instant case:

> Although it is, of course, impossible to define rigidly what constitutes a "section of the country," certain broad standards reflecting the general intent of Congress can be set forth . . . What constitutes a section will vary *with the nature of the product.*
>
> Owing to the differences in the size and character of markets, *it would be meaningless from an economic point of view, to attempt to apply for all products a uniform definition of section, . . . A section which would be economically significant for a heavy, durable product, such as large machine tools, might well be meaningless for a light product such as milk.*
>
> In determining the area of effective competition for a given product, it will be necessary to decide what comprises an appreciable segment of the market. *An appreciable segment of the market* may not only be a segment which covers an appreciable segment of the trade, but it *may also be*

> *a segment which is largely segregated from, independent of, or not affected by the trade in that product in other parts of the country.*
>
> It should be noted that although the section of the country in which there may be a lessening of competition *will normally be one in which the acquired company or the acquiring company may do business,* the bill is broad enough to cope with a substantial lessening of competition in any other section of the country as well. (Italics supplied)

B. Cases Decided Under Section 7 of the Clayton Act Show the Illegality of This Merger

The foregoing pronouncement of Congress concerning milk is particularly applicable. Perhaps if the Court below had emphasized the comparison of beer with milk—instead of cigarettes—it might have reached a different decision.

In its opinion below in the case of *United States* v. *Pabst Brewing Company,* 233 F. Supp. 475 (1964), the Court stated, at page 485:

> We consider that the beer market resembles the cigarette market more than the steel market in that the record reveals that the use of beer is nation-wide, its sales are not limited primarily to states having any particular industry and no state or area can be said to be predominant in the sale or consumption of beer.

The foregoing is not well founded in the record, which demonstrates that the sale of beer *does* vary from state to state.

Also, according to *Standard & Poor's Industry Survey* of November 1965, there were ten states which currently account for 62% of total beer sales in the

United States. These states are New York, California, Pennsylvania, *Illinois,* Ohio, *Michigan,* Texas, New Jersey, *Wisconsin,* and Massachusetts. In the same survey it was pointed out that ten states account for 72% of beer production and these states are *Wisconsin,* New York, Missouri, California, New Jersey, Pennsylvania, Ohio, *Illinois,* Minnesota and *Michigan.*

There are problems in citing cases in connection with an alleged "Section 7" violation, as each case concerns itself with a different industry, and a different competitive situation. Hence, each separate case has to be decided on its merits in line with the Congressional intent of the statute.

However, there are some broad principles reached in recent "Section 7" cases which are relevant here. In the case of *Brown Shoe Company* v. *United States,* 370 U.S. 294 (1961), this Court stated at page 337 as follows:

> Congress prescribed a pragmatic, factual approach to the definition of the relevant market and not a formal, legalistic one. The geographic market selected must, therefore, both "correspond to the commercial realities" of the industry and be economically significant.

The facts of the *Brown Shoe* case are not material to this discussion; but the tests concerning whether, in a given instance, a "relevant market" is a sufficiently separate area of competition are most pertinent.

This case sets up several guidelines. The segmentation of a geographic market must: 1. not be formal or legalistic; 2. correspond to the commercial realities of the industry; and 3. be economically significant.

The national market has been agreed upon as a relevant geographic market for the purposes of this case. However, at issue is whether or not State of Wisconsin, and the three-state area of Wisconsin, Michigan, and Illinois may be considered as relevant geographic markets.

With particular reference to the State of Wisconsin, the selection of this state as a relevant market area is neither formal nor legalistic. The selection of the State of Wisconsin because of its borders or state laws might constitute a formal or legal segmentation, if these were the only factors. However, the state has not been selected for these reasons alone. The majority of the brewers in Wisconsin compete almost solely within the state. The Pabst and Blatz brewing plants were both physically located within the State of Wisconsin and the companies actively competed with the other Wisconsin brewers in the state, and ***between themselves*** previous to the merger.

The fact that some of the brewers within Wisconsin sold beer outside of the state is almost irrelevant; and it becomes irrelevant upon investigation.

Had the situation been that brewers in Wisconsin were supplying the United States as a whole, then the arguments against making Wisconsin a separate geographic market might be valid. Appellees have made much of the fact that the majority of beer produced in Wisconsin is sold outside of Wisconsin. However, this has been demonstrated to be true only for a few of the 28 remaining brewers who are located within the state. It has been further proven that the largest number of brewers in the nation compete locally in Wisconsin. The highest percentage of draft beer is

sold in Wisconsin. The highest per capita consumption is in Wisconsin, and Wisconsin produces more beer than any other state. Accordingly, such a market becomes economically significant and competition strictly within the state cannot be said to constitute *de minimus* competition.

The competition takes place where the competitors are. A majority of the competitors injured by the merger are physically located in Wisconsin and sell their beer in Wisconsin. For these brewers this is the *only* significant area of competition, and thus Wisconsin as a geographic market corresponds to the "commercial realities" of the industry. Accordingly, the reasoning of this court in the case of *U. S.* v. *Philadelphia National Bank*, 374 U.S. 321 (1963), is most important concerning the test of the anticompetitive effect of the merger. At page 363 this court stated:

> . . . we think that a merger which produces a firm controlling an undue percentage share of the relevant market, and results in a significant increase in the concentration of firms in that market, is so inherently likely to lessen competition substantially that it must be enjoined in the absence of evidence clearly showing that the merger is not likely to have such anticompetitive effects.

It has been shown that the small brewers are not the most efficient operators in the brewing industry. However, concerning this point the case of *Crown Zellerbach Corp.* v. *Federal Trade Commission*, 296 F. 2d 800 (1961), *cert. denied*, 370 U.S. 397, is most interesting. In that case the Court held at page 825:

> It is plain however from the Act and its legislative history that concern with such considerations (of increased efficiency) was no part of the con-

> gressional thought. Congress was not concerned about increased efficiency; it was concerned about the competitor—the small businessman whose little independent units are gobbled up by the bigger ones," and about other competitors whose opportunities to meet the price of the largest concern and hence compete with it might be diminished by a merger which increased the concentration of power in the large organization.

The Court had expressed similar concern in the *Brown Shoe* case, *supra*, wherein at page 333 it was stated:

> Congress was desirous of preventing the formation of further oligopolies with their attendant adverse effects upon local control of industry and upon small business. Where an industry was composed of numerous independent units, Congress appeared anxious to preserve this structure.

Finally, the fact that Section 7 of the act would proscribe against the merger in the situation at bar is further exemplified in the *Philadelphia National Bank* case, *supra*, wherein this Court stated:

> The proper question to be asked . . . is not where the parties to the merger do business or even where they compete, but where, within the area of competitive overlap, the effect of the merger on competition will be direct and immediate.

The anticompetitive effect of the merger has been shown to have been direct and immediate within the State of Wisconsin, to the detriment of the small brewers operating there.

Likewise from the statistical picture drawn in the nation as a whole from 1957 to 1965, the effect of the

merger of Pabst and Blatz has been shown to be a direct factor in the diminishing sales of small brewers generally.

CONCLUSION

For the foregoing reasons the Brewers' Association of America, and its small brewer members throughout the nation, respectfully urge that the government has made out a *prima facie* case in the District Court.

WHEREFORE the Brewers' Association of America prays that this case be reversed and remanded.

Respectfully submitted,

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EXHIBIT 1

Brewer Members of the Brewer's Association of America

Altoona Brewing Co., Altoona, Pennsylvania
American Brewery, Inc., Baltimore, Maryland
Berlin Brewing Co., Berlin, Wisconsin
Blitz-Weinhard Co., Portland, Oregon
Bosch Brewing Co., Houghton, Michigan
Peter Bub Brewery, Inc., Winona, Minnesota
Buckeye Brewing Co., Toledo, Ohio
The Burger Brewing Co., Cincinnati, Ohio
Carling Brewing Co., Cleveland, Ohio
Century Brewery Corporation, Norfolk, Virginia
Cold Spring Brewing Co., Cold Spring, Minnesota
Columbia Brewing Co., Shenandoah, Pennsylvania
Dakota Malting & Brewing Co., Bismarck, North Dakota
Dawson's Brewery, Inc., New Bedford, Massachussetts
Diamond Spring Brewery, Inc., Lawrence, Massachusetts
Dixie Brewing Co., Inc., New Orleans, Louisiana
Du Bois Brewing Co., DuBois, Pennsylvania
Dubuque Star Brewing Co., Dubuque, Iowa
Duluth Brewing & Malting Co., Duluth, Minnesota
Duquesne Brewing Company of Pittsburgh, Penna., Pittsburgh, Pennsylvania
Eastern Brewing Corporation, Hammonton, New Jersey
Effinger Brewing Co., Baraboo, Wisconsin
Erie Brewing Co., Erie, Pennsylvania
Falls City Brewing Co., Inc., Louisville, Kentucky
Fauerbach Brewing Co., Madison, Wisconsin
Fesenmeier Brewing Co., Huntington, West Virginia
Fischbach Brewing Co., St. Charles, Missouri
Fitger Brewing Co., Duluth, Minnesota
Fuhrmann & Schmidt Brewing Co., Shamokin, Pennsylvania
The Genesee Brewing Co., Inc., Rochester, New York
Gettelman Brewing Corp., Milwaukee, Wisconsin

Geyer Brothers Brewing Co., Frankenmuth, Michigan
Grace Bros. Brewing Co., Santa Rosa, California
Great Falls Breweries, Inc., Great Falls, Montana
John Hauenstein Co., Inc., New Ulm, Minnesota
Home Brewing Company, Richmond, Virginia
Horlacher Brewing Co., Allentown, Pennsylvania
Jos. Huber Brewing Co., Monroe, Wisconsin
The Hudepohl Brewing Co., Cincinnati, Ohio
Hull Brewing Co., New Haven, Connecticut
Jones Brewing Co., Smithton, Pennsylvania
Chas. D. Kaier Co., Inc., Mahanoy City, Pennsylvania
Fred Koch Brewery, Dunkirk, New York
Latrobe Brewing Co., Latrobe, Pennsylvania
Jacob Leinenkugel Brewing Co., Chippewa Falls, Wisconsin
The Lion Inc., Wilkes-Barre, Pennsylvania
Lone Star Brewing Co., San Antonio, Texas
Maier Brewing Co., Los Angeles, California
Marathon City Brewing Co., Marathon, Wisconsin
Marshfield Brewing Co., Marshfield, Wisconsin
Metropolis Brewery of N. J. Inc., Trenton, New Jersey
Minneapolis Brewing Co., Minneapolis, Minnesota
Mount Carbon Brewery, Pottsville, Pennsylvania
Louis F. Neuweiler's Sons, Allentown, Pennsylvania
Northern Brewing Co., Superior, Wisconsin
Oconto Brewing Co., Oconto, Wisconsin
Oertel Brewing Co., Inc., Louisville, Kentucky
Old Crown Brewing Corp., Fort Wayne, Indiana
Henry F. Ortlieb Brewing Co., Philadelphia, Pennsylvania
Oshkosh Brewing Co., Oshkosh, Wisconsin
The Peoples Brewing Co., Oshkosh, Wisconsin
Potosi Brewing Co., Potosi, Wisconsin
Reading Brewing Co., Reading, Pennsylvania
Reisch Brewing Co., Springfield, Illinois
Rhinelander Brewing Co., Rhinelander, Wisconsin
Rice Lake Brewing Co., Rice Lake, Wisconsin
August Schell Brewing Co., New Ulm, Minnesota

Schoenling Brewing Co., Cincinnati, Ohio
Sicks' Rainier Brewing Co., Seattle, Washington
Sieben's Brewery Co., Chicago, Illinois
Silver Springs Brewing Co., Tacoma, Washington
William Simon Brewery, Buffalo, New York
Spoetzl Brewery, Shiner, Texas
Standard Rochester Brewing Co., Inc., Rochester, New York
Steam Beer Brewing Co., San Francisco, California
Stevens Point Beverage Co., Stevens Point, Wisconsin
Storz Brewing Co., Omaha, Nebraska
Straub Brewery, St. Marys, Pennsylvania
Sunshine Brewing Co., Reading, Pennsylvania
The Tivoli Brewing Co., Denver, Colorado
Two Rivers Beverage Co., Two Rivers, Wisconsin
Van Merritt Brewing Co., Chicago, Ill.
August Wagner Breweries, Inc., Columbus, Ohio
Walter Brewing Co., Eau Claire, Wisconsin
The Walter Brewing Co., Pueblo, Colorado
Geo. Walter Brewing Co., Appleton, Wisconsin
Warsaw Brewing Corp., Warsaw, Illinois
West Bend Lithia Co., West Bend, Wisconsin
The West End Brewing Co., Utica, New York

Note: Multiple plant ownership omitted

EXHIBIT 2

Sales of Leading Brewers*

(Barrels of 31 Gallons)

Brewer	1962	% of Total Sales	
Anheuser-Busch	9,034,636	9.90	
Schlitz	6,880,277	7.54	
Pabst	5,842,707	6.40	
Carling	5,358,608	5.87	
Falstaff	5,300,000	5.81	
Ballantine	4,550,000	4.98	
Hamms	3,724,000	4.08	
Schaefer	3,777,940	4.14	
Liebmann	2,992,000	3.28	
Miller	2,805,000	3.07	
			Total Top Ten— 50,265,168
Coors	2,773,000	3.04	
Lucky Lager	2,160,000	2.36	
Stroh	2,036,807	2.23	
Drewrys	1,950,000	2.13	
Schmidt	1,870,876	2.05	
Olympia	1,741,000	1.90	
Pearl	1,476,303	1.61	
National	1,381,467	1.51	
Ruppert	1,200,000	1.31	
Narragansett	1,160,563	1.27	
Jackson	1,032,000	1.13	
Duquesne	1,003,018	1.09	
Genesee	965,000	1.05	
Associated	948,040	1.03	
Lone Star	891,112	.97	
			Total Top 25— 72,854,354

* Source: Modern Brewery Age.

EXHIBIT 3

Sales of Leading Brewers*

(Barrels of 31 Gallons)

Brewer	1963	% of Total Sales	
Anheuser-Busch	9,267,393	9.86	
Schlitz	7,834,253	8.33	
Pabst	6,672,000	7.09	
Carling	5,681,141	6.04	
Falstaff	5,548,176	5.90	
Ballantine	4,495,000	4.78	
Schaefer	4,042,395	4.30	
Hamms	3,826,400	4.07	
Coors	3,053,000	3.24	
Liebmann	3,018,000	3.21	
			Total Top Ten— 53,437,758
Miller	2,900,000	3.11	
Drewrys	2,601,563	2.76	
Stroh	2,045,350	2.17	
General	1,982,446	2.10	
Schmidt	1,934,000	2.05	
Olympia	1,775,000	1.88	
Pearl	1,598,631	1.70	
National	1,400,567	1.48	
Ruppert	1,270,000	1.35	
Narragansett	1,226,000	1.30	
Associated	1,148,748	1.22	
Genesee	1,100,000	1.17	
Jackson	1,018,000	1.08	
Duquesne	1,010,000	1.07	
Lone Star	900,390	.95	
			Total Top 25— 77,348,453

* Source: Modern Brewery Age.

EXHIBIT 4

Sales of Leading Brewers*

(Barrels of 31 Gallons)

Brewer	1964	% of Total Sales	
Anheuser-Busch	10,235,203	10.37	
Schlitz	8,266,136	8.37	
Pabst	7,444,000	7.54	
Falstaff	5,819,659	5.89	
Carling	5,775,000	5.85	
Schaefer	4,446,634	4.50	
Ballantine	4,368,000	4.42	
Hamms	3,729,000	3.78	
Coors	3,420,000	3.46	
Miller	3,287,016	3.33	
			Total Top Ten— 57,090,648
Rheingold	3,108,540	3.15	
Drewrys	2,610,349	2.64	
Stroh	2,284,000	2.31	
Schmidt	2,200,000	2.23	
Olympia	2,168,000	2.19	
General	1,753,000	1.77	
National	1,701,765	1.72	
Pearl	1,692,758	1.71	
Associated	1,485,474	1.50	
Ruppert	1,470,000	1.49	
Narragansett	1,275,000	1.29	
Genesee	1,225,000	1.24	
Duquesne	1,095,000	1.11	
Jackson	1,048,000	1.06	
Lone Star	943,000	.95	
			Total Top 25— 83,150,534

* Source: Modern Brewery Age.

EXHIBIT 5

Sales of Leading Brewers[1]

(Barrels of 31 Gallons)

Brewer	1965	% of Total Sales	
Anheuser-Busch	11,800,000	11.7	
Schlitz	8,600,000	8.5	
Pabst	8,234,000	8.2	
Falstaff	6,300,000	6.3	
Carling	5,251,000	5.5	
Schaefer	4,358,000	4.3	
Associated	4,250,000	4.2	
Ballantine	4,240,000	4.2	
Rheingold	4,236,000	4.2	
Hamms	3,841,000	3.8	
			Total Top Ten— 61,110,000
Miller	3,660,000	3.6	
Coors	3,560,000	3.5	
Stroh	2,402,000	2.4	
Olympia	2,383,000	2.3	
Schmidt	2,370,000	2.3	
National	1,873,000	1.8	
Pearl	1,712,000	1.7	
General	1,670,000	1.6	
Genesee	1,310,000	1.3	
Duquesne	1,127,000	1.1	
Jackson	1,110,000	1.1	
Lone Star	1,057,000	1.0	
(unknown)[2]	1,000,000	1.0	
(unknown)	975,000	.97	
(unknown)	950,000	.95	
			Total Top 25— 88,269,000

[1] Source: National Beer Wholesalers Association, and Brewing World (Preliminary estimates).

[2] Assumed figures for completion of Top 25 Brewers.

Sales of Individual Wisconsin Brewers*

EXHIBIT 6

Barrels of 31 gallons

Brewery	1962 Wisconsin Sales	Out of State	Total Sales	% Intrastate
Berlin Brg., Berlin	9,100.40	73.80	9,174.20	99.21
Effinger Brg. Co., Baraboo	9,355.15	—	9,355.15	100.00
Fauerbach Brg. Co., Madison	29,976.57	—	29,976.57	100.00
Fountain Brg. Co., Fountain City	2,769.82	6,468.34	9,238.16	29.99
Fox Head, Waukesha	32,467.20	43,372.49	75,839.69	42.81
Gettelman Brg. Co., Milwaukee	113,236.80	43,845.74	157,082.54	72.09
Heileman Brg. Co., LaCrosse	142,330.52	288,560.61	430,891.13	33.03
Heileman Brg. Co., Sheboygan	143,367.22	74,700.37	218,067.59	65.75
Huber Brg. Co., Monroe	19,279.78	47,391.58	66,671.36	28.92
Indep. Milwaukee Bry., Milwaukee	43,298.32	89,465.61	132,763.93	32.62
Leinenkugel Brg. Co., Chippewa Falls	70,822.61	2,217.41	73,040.02	96.97
Marathon City Brg. Co., Marathon	8,119.95	—	8,119.95	100.00
Marshfield Brg. Co., Marshfield	8,248.37	—	8,248.37	100.00
Miller Brg. Co., Milwaukee	144,691.31	2,489,278.16	2,633,969.47	5.50
Northern Brg. Co., Superior	10,926.04	7,591.32	18,517.36	59.01
Oconto Brg. Co., Inc., Oconto	34,734.30	1,875.75	36,610.05	94.88
Oshkosh Brg. Co., Oshkosh	53,536.40	371.21	53,907.61	99.32
Pabst Brg. Co., Milwaukee	904,879.13	2,174,207.20	3,079,086.33	29.39
Peoples Brg. Co., Oshkosh	29,351.99	—	29,351.99	100.00
Potosi Brg. Co., Potosi	19,384.07	26,132.66	45,516.73	42.59
Rahr Green Bay Brg. Co., Green Bay	29,719.04	5,378.76	33,097.80	83.76
Rhinelander Brg. Co., Rhinelander	15,344.11	2,457.97	17,802.08	86.20
Rice Lake Brg. Co., Rice Lake	13,946.82	2,313.81	16,260.63	85.78
Schlitz Brg. Co., Inc., Milwaukee	457,236.57	3,482,084.34	3,939,320.91	11.61
Stevens Point Bry., Stevens Point	33,963.58	—	33,963.58	100.00
Two Rivers Bev. Co., Two Rivers	8,286.04	—	8,286.04	100.00
Walter Brg. Co., Appleton	35,748.22	—	35,748.22	100.00
Walter Brg. Co., Eau Claire	30,361.82	285.30	30,647.12	99.08
West Bend Lithia Co., West Bend	25,500.53	3,262.98	28,763.51	88.66
Totals	2,479,976.68	8,791,335.41	11,271,312.09	22.01

* Source: Wisconsin Department of Taxation, Division of Beverage & Cigarette Taxes.

Barrels of 31 gallons

Brewery	1963 Wisconsin Sales	Out of State	Total Sales	% Intrastate
Berlin Brg. Co., Berlin	7,957.79	277.75	8,235.54	96.64
Effinger Brg. Co., Baraboo	9,051.95	—	9,051.95	100.00
Fauerbach Brg. Co., Madison	27,605.45	—	27,605.45	100.00
Fountain Brg. Co., Fountain City	2,762.74	4,585.69	7,348.43	37.61
Gettelman Brg. Co., Milwaukee	114,598.67	47,373.82	161,972.49	70.76
Heileman Brg. Co., LaCrosse	172,367.77	341,552.71	513,920.48	33.54
Heileman Brg. Co., Sheboygan	151,707.96	83,588.40	235,296.36	64.48
Huber Brg. Co., Monroe	26,424.89	63,469.98	89,894.87	29.40
Indep. Milwaukee Bry., Milwaukee	50,059.66	65,261.17	115,320.83	43.41
Leinenkugel Brg. Co., Chippewa Falls	72,656.60	2,610.34	75,266.94	96.54
Marathon City Brg. Co., Marathon	6,739.94	—	6,739.94	100.00
Marshfield Brg. Co., Marshfield	8,412.54	—	8,412.54	100.00
Miller Brg. Co., Milwaukee	134,279.79	2,500,811.82	2,635,091.61	5.10
Northern Brg. Co., Superior	11,094.40	7,123.89	18,218.89	60.91
Oconto Brg. Co., Inc., Oconto	34,248.42	2,885.12	37,133.54	92.24
Oshkosh Brg. Co., Oshkosh	54,720.99	293.33	55,014.32	99.47
Pabst Brg. Co., Milwaukee	968,226.25	2,520,545.57	3,488,771.82	27.76
Peoples Brg. Co., Oshkosh	29,066.23	—	2,906.23	100.00
Potosi Brg. Co., Potosi	18,669.91	24,530.22	43,200.13	32.22
Rahr Green Bay Brg. Co., Green Bay	28,675.93	5,347.64	34,023.57	84.29
Rhinelander Brg. Co., Rhinelander	13,938.32	2,236.21	16,174.53	86.18
Rice Lake Brg. Co., Rice Lake	13,652.50	2,835.16	16,487.66	82.81
Schlitz Brg. Co., Inc., Milwaukee	522,272.06	3,963,024.53	4,485,296.59	11.65
Stevens Point Bry., Stevens Point	33,307.11	—	33,307.11	100.00
Two Rivers Bev. Co., Two Rivers	7,189.71	—	7,189.71	100.00
Walter Brg. Co., Appleton	34,163.65	—	34,163.65	100.00
Walter Brg. Co., Eau Claire	29,340.33	844.45	30,184.78	97.21
West Bend Lithia Co., West Bend	24,570.22	4,415.27	28,985.49	84.77
Totals	2,588,714.70	9,643,613.07	12,232,327.77	21.17

* Source: Wisconsin Department of Taxation, Division of Beverage & Cigarette Taxes.

Sales of Individual Wisconsin Brewers*

EXHIBIT 8

Barrels of 31 gallons

Brewery	1964 Wisconsin Sales	Out of State	Total Sales	% Intrastate
Berlin Brg. Co., Berlin	5,432.91	89.11	5,522.02	98.39
Effinger Brg. Co., Baraboo	9,487.09	—	9,487.09	100.00
Fauerbach Brg. Co., Madison	23,666.52	—	23,666.52	100.00
Fountain Brg. Co., Fountain City	2,598.76	3,492.33	6,091.09	42.67
Gettelman Brg. Co., Milwaukee	116,313.54	50,562.36	166,875.90	69.71
Heileman Brg. Co., LaCrosse	193,346.04	425,957.38	619,303.42	31.22
Heileman Brg. Co., Sheboygan	153,570.10	112,126.65	265,696.75	57.80
Huber Brg. Co., Monroe	31,629.80	77,940.91	109,570.71	28.87
Leinenkugel Brg. Co., Chippewa Falls	74,916.17	2,947.47	77,863.64	96.22
Marathon City Brg. Co., Marathon	6,085.88	—	6,085.88	100.00
Marshfield Brg. Co., Marshfield	8,175.43	—	8,175.43	100.00
Miller Brg. Co., Milwaukee	133,843.00	2,989,545.46	3,123,388.46	4.29
Northern Brg. Co., Superior	9,919.06	7,535.37	17,454.43	56.83
Oconto Brg. Co., Inc., Oconto	32,300.78	3,948.95	36,249.73	89.11
Oshkosh Brg. Co., Oshkosh	52,495.01	884.41	53,379.42	98.35
Pabst Brg. Co., Milwaukee	1,063,203.35	2,829,828.62	3,893,031.97	27.32
Peoples Brg. Co., Oshkosh	29,489.82	—	29,489.82	100.00
Potosi Brg. Co., Potosi	18,291.37	24,866.59	43,157.96	42.39
Rahr Green Bay Brg. Co., Green Bay	25,963.52	4,554.70	30,518.22	85.08
Rhinelander Brg. Co., Rhinelander	13,228.21	798.80	14,027.01	94.32
Rice Lake Brg. Co., Rice Lake	12,442.31	2,548.55	14,990.86	83.01
Schlitz Brg. Co., Inc., Milwaukee	566,106.24	4,367,381.31	4,933,487.55	11.48
Stevens Point Bry., Stevens Point	32,958.15	—	32,958.15	100.00
Two Rivers Bev. Co., Two Rivers	7,734.16	—	7,734.16	100.00
Walter Brg. Co., Appleton	32,626.96	—	32,626.96	100.00
Walter Brg. Co., Eau Claire	28,614.29	1,007.55	29,621.84	96.27
West Bend Lithia Co., West Bend	23,297.29	5,504.09	28,801.38	80.89
Totals	2,707,725.06	10,911,520.61	13,619,245.67	19.89

*Source: Wisconsin Department of Taxation, Division of Beverage & Cigarette Taxes.

Sales of Individual Wisconsin Brewers*

Barrels of 31 gallons

EXHIBIT 9

Brewery	1965 Wisconsin Sales	Out of State	Total Sales	% Intrastate
Effinger Brg. Co., Baraboo	7,903.69	——	7,903.69	100.00
Fauerbach Brg. Co., Madison	23,314.10	——	23,314.10	100.00
Fountain Brg. Co., Fountain City	789.32	747.60	1,536.92	51.37
Gettelman Brg. Co., Milwaukee	51,612.32	15,177.57	66,789.89	77.28
Heileman Brg. Co., LaCrosse	195,439.73	468,053.08	663,492.81	29.46
Heileman Brg. Co., Sheboygan	143,705.20	126,068.19	269,773.39	53.27
Huber Brg. Co., Monroe	30,876.49	80,810.80	111,687.29	27.65
Leinenkugel Brg. Co., Chippewa Falls	72,610.02	3,389.23	75,999.25	95.55
Marathon City Brg. Co., Marathon	4,229.55	——	4,229.55	100.00
Marshfield Brg. Co., Marshfield	7,818.28	——	7,818.28	100.00
Miller Brg. Co., Milwaukee	217,761.02	3,383,139.65	3,600,900.67	6.05
Northern Brg. Co., Superior	6,715.01	7,448.97	14,163.98	47.42
Oconto Brg. Co., Inc., Oconto	28,847.66	4,439.33	33,286.99	86.67
Oshkosh Brg. Co., Oshkosh	45,454.37	1,300.06	46,754.43	97.22
Pabst Brg. Co., Milwaukee	1,123,768.29	3,033,313.86	4,157,082.15	27.04
Peoples Brg. Co., Oshkosh	27,909.92	242.50	28,152.42	99.15
Potosi Brg. Co., Potosi	17,932.91	23,281.42	41,214.33	43.52
Rahr Green Bay Brg. Co., Green Bay	22,003.11	3,887.17	25,890.28	86.92
Rhinelander Brg. Co., Rhinelander	10,413.55	1,717.70	12,131.25	85.85
Rice Lake Brg. Co., Rice Lake	10,893.24	2,592.51	13,485.75	80.78
Schlitz Brg. Co., Inc., Milwaukee	545,748.25	4,422,359.76	4,968,108.01	10.99
Stevens Point Bry., Stevens Point	31,372.21	——	31,372.21	100.00
Two Rivers Bev. Co., Two Rivers	5,547.48	——	5,547.48	100.00
Walter Brg. Co., Appleton	30,625.19	——	30,625.19	100.00
Walter Brg. Co., Eau Claire	27,391.49	881.69	28,273.18	96.89
West Bend Lithia Co., West Bend	21,269.01	5,168.92	26,437.93	80.46
Totals	2,711,951.41	11,583,910.01	14,295,861.42	18.98

* Source: Wisconsin Department of Taxation, Division of Beverage & Cigarette Taxes.

EXHIBIT 10

Sales of Beer in Michigan by All Firms Selling Over 5,000 Barrels in 1962*

Company	Barrels	Per Cent	Rank
Stroh	1,077,716	20.65	1
Pabst	149,518	(2.87)	
Pabst (Blatz)	819,868	(15.71)	
Total	969,386	18.58	2
Carling	643,708	12.33	3
E & B	262,243		
Pfeiffer	324,879		
Total	587,122	11.25	4
Drewrys	500,359	9.59	5
Schlitz	103,002		
Schlitz (Old Milwaukee)	135,380		
Total	238,382	4.57	6
Anheuser-Busch	196,352	3.76	7
Goebel	195,676	3.75	8
National	177,540	3.40	9
Falstaff	109,488	2.10	10
International	92,263	1.77	11
Bosch	88,084	1.69	12
Miller	74,535	1.43	13
Atlantic	68,796	1.32	14
Sebewaing	27,827	.53	15
Buckeye	26,735	.51	16
Hamm	14,346	.27	17
Canadian Ace	13,808	.26	18
Geyer	10,887	.21	19
Peter Hand	10,643	.20	20
Century Importers	10,535	.20	21
Independent-Milwaukee	10,242	.20	22
O'Donnell Import	10,062	.19	23
Hornell	5,983	.11	24
Burkhardt	5,302	.10	25
All Others (44)	52,898	1.01	—
Total	5,218,675		

* Source: Mfgrs. & Wholesalers Department, Mich. Liquor Control Commission.

EXHIBIT 11

Sales of Beer in Michigan by All Firms Selling Over 5,000 Barrels in 1963*

Company	Barrels	Per Cent	Rank
Pabst	474,771	(9.15)	
Pabst (Blatz)	782,949	(15.10)	
Total Pabst	1,257,720	24.25	1
Stroh	1,006,032	19.40	2
Carling	658,362	12.69	3
Associated—E & B	232,168		
Associated—Pfeiffer	256,887		
Total Associated	489,055	9.43	4
Drewrys	460,982	8.89	5
Schlitz	110,573		
Schlitz (Old Milwaukee)	128,576		
Total Schlitz	239,149	4.61	6
Anheuser-Busch	188,764	3.64	7
National	187,660	3.62	8
Goebel	149,402	2.88	9
Bosch	79,309	1.53	10
International	78,897	1.52	11
Falstaff	78,583	1.52	12
Miller	75,645	1.46	13
Atlantic	47,587	.92	14
Sebewaing	24,829	.48	15
Buckeye	21,195	.41	16
Hamm	19,143	.37	17
Canadian Ace	18,535	.36	18
Peter Hand	12,283	.24	19
Geyer	11,645	.22	20
O'Donnell Import	11,371	.22	21
Century Importers	9,658	.19	22
Independent-Milwaukee	6,392	.12	23
Hornell	5,863	.11	24
All Others (42)	48,565	.94	—
Total	5,186,626		

* Source: Mfgrs. & Wholesalers Department, Mich. Liquor Control Commission.

EXHIBIT 12

Sales of Beer in Michigan by All Firms Selling Over 5,000 Barrels in 1964*

Company	Barrels	Per Cent	Rank
Pabst	633,371	(11.58)	
Pabst (Blatz)	796,016	(14.54)	
Total Pabst	1,429,387	26.12	1
Stroh	1,024,362		
Stroh—Goebel	61,674		
Total Stroh	1,086,036	19.85	2
Carling	723,917	13.23	3
Associated—E & B	212,424		
Associated—Pfeiffer	245,783		
Total Associated	458,207	8.37	4
Drewrys	449,646	8.22	5
Schlitz	123,859		
Schlitz (Old Milwaukee)	126,527		
Total Schlitz	250,386	4.58	6
Anheuser-Busch	248,427	4.54	7
National	231,728	4.24	8
Miller	96,372	1.76	9
Falstaff	81,972	1.50	10
International	72,550	1.33	11
Bosch	64,588	1.18	12
Goebel	48,780	.89	13
Atlantic	40,036	.73	14
Sebewaing	21,209	.39	15
Hamm	19,912	.36	16
Buckeye	18,955	.35	17
Peter Hand	17,732	.32	18
Century Importers	15,938	.29	19
Canadian Ace	14,438	.26	20
O'Donnell Import	13,191	.24	21
Geyer	12,631	.23	22
Cumberland	9,193	.17	23
Werilemann	6,698	.12	24
Metropolis	5,777	.11	25
G. Heileman	5,521	.10	26
Old Crown	5,304	.10	27
All Others (37)	23,113	.42	—
Total	5,471,644		

* Source: Mfgrs. & Wholesalers Department, Mich. Liquor Control Commission.

EXHIBIT 13

Sales of Beer in Michigan by All Firms Selling Over 5,000 Barrels in 1965*

Company	Barrels	Per Cent	Rank
Pabst	819,719.74	(14.85)	
Pabst (Blatz)	758,308.10	(13.73)	
Total Pabst	1,578,027.84	28.58	1
Stroh	991,098.28	(17.95)	
Stroh—Goebel	100,434.61	(1.82)	
Total Stroh	1,091,532.89	19.77	2
Carling	694,841.70	12.58	3
Drewry Ltd.	421,747.51	7.64	4
Associated—E & B	163,639.18	(2.96)	
Associated—Pfeiffer	204,523.25	(3.70)	
Total Associated	368,162.43	6.67	5
Anheuser-Busch	322,121.89	5.83	6
Schlitz	130,673.40	(2.37)	
Schlitz (Old Milwaukee)	127,081.98	(2.30)	
Total Schlitz	257,755.38	4.67	7
National	240,825.49	4.36	8
Miller	116,742.03	2.11	9
Falstaff	85,271.73	1.54	10
Theo. Hamm	64,122.34	1.16	11
International	60,759.76	1.10	12
Bosch	49,865.16	.90	13
Peter Hand	19,827.71	.36	14
Atlantic	16,402.96	.30	15
Buckeye	16,346.59	.30	16
Century	15,506.24	.28	17
Geyer	15,102.15	.27	18
O'Donnell Distributing	13,213.60	.24	19
Canadian Ace	10,334.50	.19	20
Michigan	9,124.55	.17	21
Cumberland	8,319.16	.15	22
Kingsbury	7,168.59	.13	23
Metropolitan	7,051.28	.13	24
Geo. Wiedemann	5,767.92	.10	25
Old Crown	5,058.19	.09	26
All Others (32)	20,405.97	.37	—
Total	5,521,405.56		

* Source: Mfgrs. & Wholesalers Department, Mich. Liquor Control Commission.